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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/783,096	02/15/2001	Kazuhiro Kusuda	Q63180	4487	
7590 06/05/2006 SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC 2100 Pennsylvania Avenue, N.W.			EXAMINER		
			COBURN, CORBETT B		
Washington, D			ART UNIT	PAPER NUMBER	
			3714		
			DATE MAILED: 06/05/2006	DATE MAILED: 06/05/2006	

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Advisory Action Before the Filing of an Appeal Brief

Application No.	Applicant(s)	Applicant(s)		
09/783,096	KUSUDA, KAZUHIRO	KUSUDA, KAZUHIRO		
Examiner	Art Unit	···		
Corbett B. Coburn	3714			

Before the filling of all Appear Brief	Examiner	Art Unit				
	Corbett B. Coburn	3714				
The MAILING DATE of this communication appe	ears on the cover sheet with the c	orrespondence add	ress			
THE REPLY FILED <u>22 May 2006</u> FAILS TO PLACE THIS APP	LICATION IN CONDITION FOR AL	LOWANCE.				
1.  The reply was filed after a final rejection, but prior to or or this application, applicant must timely file one of the follor places the application in condition for allowance; (2) a Not a Request for Continued Examination (RCE) in compliantime periods:	wing replies: (1) an amendment, aff otice of Appeal (with appeal fee) in c	idavit, or other evider compliance with 37 C	nce, which FR 41.31; or (3)			
a) The period for reply expires 6 months from the mailing date	e of the final rejection.					
no event, however, will the statutory period for reply expire	no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.					
Examiner Note: If box 1 is checked, check either box (a) or TWO MONTHS OF THE FINAL REJECTION. See MPEP 7	706.07(f).					
Extensions of time may be obtained under 37 CFR 1.136(a). The date have been filed is the date for purposes of determining the period of exunder 37 CFR 1.17(a) is calculated from: (1) the expiration date of the set forth in (b) above, if checked. Any reply received by the Office late may reduce any earned patent term adjustment. See 37 CFR 1.704(b) NOTICE OF APPEAL	dension and the corresponding amount shortened statutory period for reply origing than three months after the mailing da	of the fee. The appropr inally set in the final Offi	iate extension fee ce action; or (2) as			
The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).  AMENDMENTS						
3. The proposed amendment(s) filed after a final rejection,	but prior to the date of filing a brief,	, will <u>not</u> be entered b	ecause			
(a) They raise new issues that would require further co		TE below);				
<ul> <li>(b) They raise the issue of new matter (see NOTE below</li> <li>(c) They are not deemed to place the application in beappeal; and/or</li> </ul>		ducing or simplifying	the issues for			
(d) They present additional claims without canceling a NOTE: (See 37 CFR 1.116 and 41.33(a))		ected claims.				
4. The amendments are not in compliance with 37 CFR 1.1		mpliant Amendment	(PTOL-324).			
<ol><li>Applicant's reply has overcome the following rejection(s</li></ol>						
<ol> <li>Newly proposed or amended claim(s) would be a  non-allowable claim(s).</li> </ol>						
7.  For purposes of appeal, the proposed amendment(s): a) how the new or amended claims would be rejected is pro The status of the claim(s) is (or will be) as follows:	☐ will not be entered, or b) ☐ wi ovided below or appended.	Il be entered and an e	explanation of			
Claim(s) allowed: Claim(s) objected to:						
Claim(s) rejected:						
Claim(s) withdrawn from consideration:						
<u>AFFIDAVIT OR OTHER EVIDENCE</u> 8.	ut before or on the date of filing a N	otice of Appeal will no	ot be entered			
because applicant failed to provide a showing of good ar was not earlier presented. See 37 CFR 1.116(e).	nd sufficient reasons why the affidat	vit or other evidence i	s necessary and			
<ol> <li>The affidavit or other evidence filed after the date of filing entered because the affidavit or other evidence failed to showing a good and sufficient reasons why it is necessa</li> </ol>	overcome <u>all</u> rejections under appe ry and was not earlier presented. S	al and/or appellant fa see 37 CFR 41.33(d)(	ils to provide a 1).			
10. ☐ The affidavit or other evidence is entered. An explanation REQUEST FOR RECONSIDERATION/OTHER	on of the status of the claims after e	ntry is below or attac	hed.			
<ol> <li>The request for reconsideration has been considered b <u>See attached.</u></li> </ol>	ut does NOT place the application i	n condition for allowa	nce because:			
12.  Note the attached Information Disclosure Statement(s).	(PTO/SB/08 or PTO-1449) Paper N	Vo(s).	10 1			
13.  Other:		(protein	Block			
		Corbett B. Coburn Primary Examiner				

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## **DETAILED ACTION**

1. The purpose of the RCE is to advance prosecution of the case. To that end, Examiner should not issue a first action final rejection in a case in which there has been a *bona fide* attempt to advance prosecution. Applicant asserts that Examiner should not have made the previous office action a final rejection.

- 2. Yet Applicant did not amend any of the claims that had been previously rejected. Nor did Applicant even present arguments attempting to distinguish the claims over the prior art. In short, Applicant appears to have conceded that the rejection was proper, but failed to amend the claims to distinguish over the prior art. Clearly, this cannot represent a *bona fide* attempt to advance prosecution since it was absolutely impossible that the case could have been allowed with the claims in their current condition.
- 3. Applicant did add three new claims, but these claims were to conventional elements well known to the art. Thus the additional claims did not represent a *bona fide* attempt to advance prosecution. Furthermore, since these claims depended from rejected claims, there was no possibility that these claims could have resulted in allowance of the case.
- 4. While it is true that Applicant pays a fee for an RCE, Applicant is not entitled to keep a case pending before the Office without movement in the prosecution of the case. Applicant must bear some responsibility for advancing prosecution of the case. If Applicant's submission does not advance prosecution and cannot be said to have even been an attempt at putting the case in condition for allowance, then a final rejection is proper.
- 5. If Applicant still believes that the finality of the previous office action was in error, Applicant may petition to have this decision overturned.

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## Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Corbett B. Coburn whose telephone number is (571) 272-4447. The examiner can normally be reached on 8-5:30, Monday-Friday, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Corbett B. Coburn Primary Examiner

Art Unit 3714 CORBETT B. COBURN PRIMARY EXAMINER